


Mine Cleanup and Abatement Order

Responsible Party:	Richard L. Miller
Parcel Controlled:	APNs 018-200-002-000, 018-200-005-000, 018-200-007-000, 018-200-013-000, 018-200-015-000, 018-200-016-000, 018-200-017-000, 018-200-018-000
Map:	 <p>Attachment A – Parcel Map with Mine Locations</p>
Waste Located on the Site:	The mine sites on the properties listed above include West End Mine, Manzanita, Central, Cherry Hill and Empire Mines, and several milling facilities. These mines and facilities include mine cuts, waste rock, tailings, mill waste, erodable mined slopes, and sediment within drainage swales, ditches, and tributaries to Sulphur Creek.
Discharge:	5C2 Report found mine tailings, and waste rock at and around the mines (5C2 Report , Pages 2-11, 2-14 and 2-15). This report also found evidence of erosion of these material into Sulfur Creek. Also, the report found slope stability problems associated with the mines (5C2 Report, Pages 2-13 and 2-15). Mercury mobilized by storm water runoff, slope failure, or water rock interaction from mine wastes at West End Mine, Manzanita, Central, Cherry Hill and Empire Mines, and several milling facilities either entered Sulphur Creek directly or entered unnamed intermittent tributary to Sulphur Creek.
Ability to Control:	<p>Richard L. Miller owns the properties listed above, and has the ability to cleanup and abate the discharge of mine waste from the Mines. Specific activities include:</p> <ul style="list-style-type: none"> • Relocating material piles away from waterways. • Placing barriers, such as grass covered berms, between mine materials and waterways. • Recontouring and revegetation of material piles and areas of surface disturbance by mining activity to reduce erosion.

	<ul style="list-style-type: none"> • Redirection of storm runoff around material piles and areas of surface disturbance to reduce erosion. • Stabilization of stream banks containing enriched mercury alluvium to minimize erosion during storm events.
Legal Theory Holding Responsible Party Accountable	<p>Dr. Richard Miller is subject to the Order because Dr. Richard Miller holds title to the property, and waste piles are discharging mercury and other pollutants to surface waters, which is causing exceedances of water quality objectives. Evidence that Dr. Richard Miller holds title to the relevant parcels can be found in the documents referenced in Attachment B, which are in the files of the Central Valley Water Board. The waste piles are still present on the property.</p> <p>California Water Code (CWC) section 13304 authorizes the Regional Water Boards to issue cleanup and abatement orders to any person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance</p> <p>Dr. Richard Miller, by taking title to the property where mining waste piles were present, took title to the mining waste piles, and thereby assumed responsibility for appropriately managing the discharges from these waste piles. As these waste piles were eroding into surface waters during the time that Dr. Richard Miller held title to the property, Dr. Richard Miller qualifies a person who has, “caused or permitted waste to be discharged into waters of the state.”</p> <p>Studies conducted during the development of a TMDL for the Cache Creek Watershed, including the CalFed 5C2 Report, determined that the erosion of materials from the waste piles present on the parcels that Dr. Richard Miller controlled contributed to a condition of pollution, defined under CWC section 13050 as an alteration of the quality of waters of the state to a degree which unreasonably affects the waters for beneficial uses.</p> <p>In addition to the initial release of pollutants into the environment, the State Water Resources Control Board (State Board) has determined that the passive release of pollutants is considered a “discharge” of waste for the purposes of determining liability under CWC section 13304. (State Board Order No. WQ 86-2, In the Matter of the Petition of Zoecon Corporation; State Board Order No. WQ 92-13, In the Matter of the Petitions of Wenwest, Inc., et al.) The scope of Dr. Richard Miller’s property interests indicates that Dr. Richard Miller has the ability to control the discharge of the legacy wastes, but is failing to do so.</p> <p>The State Board has ruled that liability for a cleanup ordered under section 13304 is joint and several. (State Board Order No. WQ 90-2, Petition of Union Oil Company.) However, the State Board has declined to apportion liability among responsible parties, leaving that determination to the parties themselves. It is the responsibility of Dr. Richard Miller to determine their responsibility relative to the other named dischargers, and to cooperatively address the tasks required of the responsible parties in the Order.</p> <p>The site’s unique geophysical characteristics made it attractive to Dr. Richard Miller’s health retreat – but it is these unique characteristics that also carry</p>

	potential liabilities. Dr. Richard Miller has claimed that a conservation easement that has been recorded for his property precludes him from taking actions to control the discharges, but the documents referenced in Attachment B, as well as the grading activities that he has conducted on the property, suggest that his ability to abate the pollution issues on his property are not limited by the easement that he has recorded.
Evidence in the Regional Water Board File	Attachment B contains the documents showing that Richard L. Miller owned the mined properties.
Photographic evidence pertaining to this parcel (if available)	Attachment C is photographs showing mined locations on aerial photo and the present conditions of some mined area and waste piles.